IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1229 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

VIJAY PRABHATBHAI VAGHRI NOTIE TO BE SERVED THROUGH

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Appearance:

Mr. D.N.Patel, APP for Petitioner

MR NIGAM R SHUKLA for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/01/2001

ORAL JUDGEMENT

Learned APP Mr. D.N.Patel for the petitioner-State. Learned advocate Mr. Nigam Shukla for

the respondent-original accused.

In this application under section 439(2) of the Code of Criminal Procedure, the petitioner-State has prayed for quashing and setting aside the impugned order passed by the learned Additional Sessions Judge, Rajkot in Criminal Miscellaneous Application No. 139 of 1998 dated 17.3.1998 whereby the respondent original accused has been ordered to be enlarged on bail, subject to certain terms and conditions incorporated in the said order, taking into consideration the age and the relevant provisions of section 18 of the Juvenile Justice Act read with section 437 of the Code of Criminal Procedure. The age of the respondent accused has been verified by the judicial order passed by the learned Chief Judicial Magistrate, Rajkot and by order dated 12th March, 1998, at the relevant time, the respondent-accused was found to be below the age of sixteen years. That order has, so far, not been challenged by the petitioner State in revision before the higher forum and taking into consideration these facts, the learned Additional Sessions Judge, Rajkot has granted the bail in favour of the original accused which is under challenge in this petition before this Court.

I have heard the learned APP Mr. D.N. Patel for the petitioner State. I have also heard Mr. Nigam Shukla, learned advocate appearing for the respondent accused.

According to Mr. Shukla, learned advocate appearing for the respondent accused, after the release of the respondent-accused on bail, almost three years have passed; no untoward incident has taken place so far and the trial has so far not commenced. He has relied upon the decision of the apex court in case of Bhagirath Sinh Jadeja versus State of Gujarat reported in AIR 1984 SC 372. In the said case, the apex court has observed that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail.It has also been observed that it is now well settled by catena of decisions of the apex court that the power of grant of bail is not to be exercised as if the punishment before trial is being imposed; the only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. If there is no prima facie case, there is no question of considering the other circumstances but even where prima facie case is established, approach of the court in the matter of bail should not be that the accused should be detained by

way of punishment but whether the presence of the accused would be readily available or whether the accused is likely to abuse the discretion granted in his favour by tampering with the evidence.

Learned APP Mr. Patel has not been able to point out before this Court that there has been any untoward incident during the intervening period of release of the respondent accused or that he has not been remaining present before the concerned court.

Considering the arguments advanced by the learned advocates for both the parties and also considering the principles laid down by the apex court in case of Bhagirath Sinh Jadeja (supra) and also considering the reasons given by the learned Additional Sessions Judge in the impugned order, I am also of the view that since the petitioner State has not been able to point out any untoward incident during the intervening period or that the accused has not been remaining present before the concerned court or that the accused has committed breach of any conditions imposed by the sessions court while releasing him on bail. Therefore, Considering all these aspects of the matter and also keeping in view the facts and circumstances of the case, as per my view, this application is required to be dismissed.

In the result, the present application is dismissed. Rule is discharged.

23.1.2001. (H.K. Rathod,J.)

Vyas